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Security Council

Fifty-eighth year

Provisional

4772nd meeting

Thursday, 12 June 2003, 10 a.m.

New York

President:	Mr. Lavrov	(Russian Federation)
Members:	Angola	Mr. Lucas
	Bulgaria	Mr. Raytchev
	Cameroon	Mr. Tidjani
	Chile	Mr. Acuña
	China	Mr. Wang Yingfan
	France	Mr. Duclos
	Germany	Mr. Pleuger
	Guinea	Mr. Traoré
	Mexico	Mr. Pujalte
	Pakistan	Mr. Akram
	Spain	Mr. Arias
	Syrian Arab Republic	Mr. Wehbe
	United Kingdom of Great Britain and Northern Ireland	Sir Jeremy Greenstock
	United States of America	Mr. Cunningham

Agenda

United Nations peacekeeping

Letter dated 6 June 2003 from the Permanent Representatives of Canada, Jordan, Liechtenstein, New Zealand and Switzerland to the United Nations addressed to the President of the Security Council (S/2003/620)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

03-39324 (E)

The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

United Nations peacekeeping

Letter dated 6 June 2003 from the Permanent Representatives of Canada, Jordan, Liechtenstein, New Zealand and Switzerland to the United Nations addressed to the President of the Security Council (S/2003/620)

The President (*spoke in Russian*): I should like to inform the Council that I have received letters from the representatives of Argentina, Brazil, Canada, Cuba, the Democratic Republic of the Congo, Greece, the Islamic Republic of Iran, Jordan, Liechtenstein, Malawi, the Netherlands, New Zealand, Nigeria, Peru, South Africa, Switzerland, Trinidad and Tobago and Uruguay, in which they request to be invited to participate in the discussion of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the discussion, without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

In order to optimize the use of our time, I will not individually invite speakers to take seats at the table. When a speaker is taking the floor, the Conference Officer will seat the next speaker on the list at the table.

At the invitation of the President, Mr. Cappagli (Argentina), Mrs. Viotti (Brazil), Mr. Heinbecker (Canada), Mrs. Booto (Democratic Republic of the Congo), Mr. Vassilakis (Greece), Mr. Zarif (Islamic Republic of Iran), H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), Mr. Wenaweser (Liechtenstein), Mr. Lamba (Malawi), Mr. van den Berg (Netherlands), Mr. McIvor (New Zealand), Mrs. Yahaya (Nigeria), Mr. de Rivero (Peru), Mr. Kumalo (South Africa), Mr. Staehelin (Switzerland), Mr. Edghill (Trinidad and Tobago) and Mr. Paolillo (Uruguay) took the seats reserved for them at the side of the Council Chamber.

The President (*spoke in Russian*): The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

Members of the Council have before them a letter dated 6 June 2003 from the Permanent Representatives of Canada, Jordan, Liechtenstein, New Zealand and Switzerland addressed to the President of the Security Council, document S/2003/620. Members of the Council also have before them a letter dated 10 June 2003 from the Permanent Representative of Greece to the United Nations addressed to the President of the Security Council, document S/2003/639.

I welcome the presence of the Secretary-General at this meeting, and I give him the floor.

The Secretary-General: Last year, in resolution 1422 (2002), the Security Council requested that the International Criminal Court (ICC) should, for a 12-month period starting 1 July 2002, not commence or proceed with investigation or prosecution of any case involving current or former officials or personnel from a contributing State not a party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, unless the Council decided otherwise. The Council also expressed the intention to renew that request each 1 July for further 12-month periods, for as long as might be necessary. This is what the Council is now about to do.

In taking that decision the Council will again rely on article 16 of the Rome Statute. I believe that that article was not intended to cover such a sweeping request, but only a more specific request relating to a particular situation. But I accept that the Council is acting in good faith, and that its purpose is to make it possible for peace operations to continue, whether established or only authorized by the Council, and for all Member States to take part in them, whether or not they are parties to the Rome Statute. Indeed, I fervently share that hope, and I am grateful to the Council for giving priority to the continuation of the Organization's vital peacekeeping work.

I wish to place on record, however, that, in addition to my concern about its conformity with article 16 of the Rome Statute, I do not believe that request is necessary.

In the first place, I believe I can state confidently that in the history of the United Nations, and certainly

during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near committing the kind of crimes that fall under the jurisdiction of the ICC. The Council's request therefore deals not only with a hypothetical case but with a highly improbably one.

Secondly, people serving in United Nations peacekeeping missions remain under the jurisdiction of their home States. Whenever one of them is accused of committing a crime during a mission, that person is immediately repatriated and is dealt with by the national courts of his or her own country.

Thirdly, under article 17 of the Rome Statute, no case is admissible in the ICC if it has already been or is being investigated or prosecuted by a State that has jurisdiction over it, unless that State is unwilling or unable genuinely to investigate or prosecute.

I assume that, in the case of a person serving in an operation established or authorized by the Security Council being accused of the kind of crime that falls under the jurisdiction of the ICC — a case that we must all hope and expect would never occur — the home State of that person would be most anxious to investigate that accusation and, if the investigation showed that there was a prima facie case, to prosecute that person. The case would then not be admissible in the ICC.

We must all hope, therefore, that this resolution will be without effect, since the situation it is designed to guard against will never arise.

I felt it was reasonable last year to adopt this resolution for 12 months, to give Member States more time to study the Rome Statute, which was only then entering into force, and to digest its implications. And I can accept that the Council feels it is necessary to renew the request now for a further 12 months, since the Court is still in its infancy and no case has yet been brought before it.

But allow me to express the hope that this does not become an annual routine. If it did, I fear the world would interpret it as meaning that the Council wished to claim absolute and permanent immunity for people serving in the operations it establishes or authorizes. If that were to happen, it would undermine not only the authority of the ICC but also the authority of the Council and the legitimacy of United Nations peacekeeping.

I am sure you understand, Mr. President, that such an outcome would cause me grave concern, and I would hope that this concern would be shared by all members of the Council.

The President (*spoke in Russian*): The first speaker inscribed on my list is the representative of Canada.

Mr. Heinbecker (Canada) (*spoke in French*): I would like to thank Council members for agreeing to an open debate on this issue of widespread interest among Member States. We are grateful for this opportunity to express our continued strong concerns with respect to the principle underlying resolution 1422 (2002). We appeal to the Council to ensure that the extraordinary situation created by the draft resolution not become permanent.

Last year, the Council heard clear opposition to resolution 1422 (2002) expressed by many Members of the Organization. This year, I will not reiterate all of the concerns we registered a year ago. Those concerns remain.

(*spoke in English*)

I will focus only on the salient points: our belief that the resolution is unnecessary, our concern that it diminishes the importance of accountability and justice for victims, our worry that it undermines fundamental principles of international law, and our doubt about its compatibility with the Council's mandate.

We respect the right of States not to become parties to the International Criminal Court (ICC). We believe, nonetheless, that this resolution is unnecessary and counterproductive.

We fully appreciate the need to prevent frivolous investigations and prosecutions. We understand the concerns triggered by ill-founded complaints that have been initiated in certain national and international jurisdictions. Canada has no desire to see the citizens of Canada or of any other peacekeeping country subjected to political harassment in judicial forums.

However, it is important to emphasize that the ICC is not a court of frivolous prosecution. In fact, its existence is a deterrent to frivolous prosecution. The ICC Statute's extraordinary array of safeguards and checks and balances screen out any frivolous claims

that may be submitted. Many of those safeguards were proposed by the United States and were willingly incorporated. Those safeguards include careful definitions of crimes, accepted by all States, with rigorous thresholds, focusing on major and deliberate atrocities; the election of judges and prosecutors by the Assembly of States Parties, in accordance with established criteria of professionalism and competence; the requirement that the Prosecutor assess complaints and screen out all but the most serious ones; the requirement that accusations pass an independent review by a pre-trial chamber and then by an appeals chamber; the capacity of States parties to remove prosecutorial officials in the highly unlikely event that they abuse their power; and not least, the principle of complementarity. That principle means that the ICC cannot act where States fulfil their duty to investigate and prosecute credible allegations of crimes. Citizens of countries that diligently investigate and prosecute crimes by their own nationals will not be investigated or prosecuted by the ICC.

The exemplary qualifications of the individuals already elected demonstrate the credibility of that institution. The first statement of the newly elected Prosecutor, Luis Ocampo, on 22 April, reveals his responsible, sober approach to the Court's mandate. Mr. Ocampo emphasized that he will act "with caution and within the strict limits provided for in the Statute" and highlighted the significance of complementarity and respect for national jurisdictions. From the President of the Assembly of States Parties to the President and Judges of the Court, to the Chief Prosecutor, the Court is in good hands and on the right path. We have every confidence that the Court will prove to be apolitical and fair.

We respectfully submit that Council action is not needed to address the risk of frivolous prosecutions because that risk is already fully addressed within the ICC Statute. If legitimate concerns remain, we would be more than prepared to see them addressed in an open dialogue, based on the actual safeguards and the actual risks and rewards inherent in international justice.

Given the safeguards and given the principle of complementarity, the only way this resolution can come into operation is both where a peacekeeper engages in the most serious international crimes and where his or her national legal system refuses to investigate or prosecute the crime. The only possible impact of this resolution is to grant, in such a case, impunity for crimes against international law.

The ICC's principal purpose is to try humanity's monsters, the perpetrators of heinous crimes. We regard the ICC as a centrepiece in the effort to end impunity for genocide and other mass crimes. We see its deterrent character as crucial to sparing future potential victims. We believe that it is the logical and necessary extension of previous international tribunals such as those at Nuremberg, The Hague and Arusha — albeit with more safeguards and even higher standards of due process.

We therefore call on Council members to support the effort to end impunity and to help provide greater human security for all. As a minimum, we ask the Council at least to refrain from hindering the collective efforts of States parties to promote law and accountability.

Resolution 1422 (2002) was one of several initiatives over the past year aimed at securing exemptions for some nationalities from the ICC. We have watched those developments with concern. Our concern arises not because we wish to see persons of any particular nationality brought before the Court. Rather, our concern arises because claims to exemption by any State entail a rejection of some very important and well-established principles of international law.

Whether one chooses to be a Party to the ICC Statute or not, there should be no doubt that the jurisdictional reach of the ICC is not limitless and that its approach is entirely founded in established law. States have jurisdiction over crimes committed on their own territory. It is also clear that they may exercise their jurisdiction over international crimes individually, through national trials, or jointly, through international trials. That principle was established at Nuremberg and has been affirmed many times since.

The issue at stake is, therefore, more important than support for any single institution. Long-agreed principles of jurisdiction and accountability are in question.

We believe that a system based on the law — the fair, predictable, equal application of principles agreed to by all — is in everyone's interest. We believe we must defend those basic principles, even if it means we sometimes must respectfully disagree with friends in doing so. We hope that through discussion over time

these differences of view can be narrowed and ultimately resolved.

We are also concerned about the legitimacy of the action recommended to the Security Council. Under the Charter, Member States have entrusted certain powers under certain conditions to the Council in order to maintain international peace and security. The exercise of those powers is a solemn responsibility. The Council has repeatedly affirmed that impunity is a threat to international peace and security and that accountability for international crimes contributes to stability. We are distressed, therefore, that the Council, in purporting to act in our name, appears in this resolution to come down on the side of impunity, and for the most serious of international crimes. We are troubled that action would be taken in the absence of any apparent threat to international peace and security, which is the fundamental precondition for action under Chapter VII of the Charter.

In conclusion, resolution 1422 (2002) raises grave concerns of principle, and we urge the Council not to renew it indefinitely.

We are confident that the Court will prove itself and that it will become clear to all that such measures are unnecessary and counterproductive.

We hope that the Council will cooperate with the Court, for example in referring grave atrocities to the Court. And we call upon Council members and all other States to continue the dialogue so that the basic principles of international law and justice can be reinforced and strengthened.

The President (*spoke in Russian*): I now give the floor to the representative of New Zealand.

Mr. McIvor (New Zealand): New Zealand welcomes the Council's agreement to requests of Member States, including ourselves, for a public meeting on this issue. This issue has important implications for all Members of the United Nations, as well as particular implications for those States party to the Rome Statute of the International Criminal Court (ICC).

The International Criminal Court was established to give effect to the international community's shared desire to end impunity for those who commit the most grievous international crimes: genocide, crimes against humanity and war crimes. It was established as a court of last resort on the principle that national courts have primary responsibility for the prosecution of crimes on their territory or committed by their nationals. The International Criminal Court may conduct a prosecution only if impunity would otherwise result. Further safeguards within the Rome Statute prevent decisions on prosecutions being taken on political rather than legal grounds. As such, New Zealand considers the International Criminal Court to be a landmark contribution to the fight against impunity. We have been happy to accept the jurisdiction of the Court as a State Party to the Rome Statute. Now that the Court is established and ready to function, with its judges and its Prosecutor elected, we will continue to provide our full support to its operation.

When we addressed the Council prior to the adoption of resolution 1422 (2002) on 12 July last year, we expressed serious concerns about the use of the specific procedure laid down in article 16 of the Rome Statute in a generic resolution to provide an immunity from the International Court's jurisdiction for personnel engaged in United Nations-mandated or -authorized operations.

We noted that we saw no need for such an immunity in fact. In order to fall under the jurisdiction of the ICC, personnel engaged in a United Nations operation would need to commit the most grievous international crimes, and those crimes would need to go unprosecuted by the authorities of the contributing State. That combination of events seemed to us unlikely last year, and continues to seem unlikely now.

We saw no need for such an immunity in principle. There should be no double standard for personnel engaged in United Nations missions. To attempt to place such personnel above the law places their moral authority and the indispensable institution of United Nations peacekeeping in serious jeopardy. We put forward this view as a State that has been at the forefront of efforts to protect the safety of United Nations personnel.

We also expressed serious concern that the use of the specific procedure laid down in article 16 in a generic resolution, not in response to a particular fact situation and with the intention to renew it on an annual basis, was inconsistent with both the terms and the purpose of that provision. As such, it touched directly on the obligations assumed by States parties under the Rome Statute, without their consent. Such an approach, to say the very least, stretched the legitimate

limits of the role and responsibility entrusted to the Council under the Charter.

Our views on the proposal before the Council to renew Security Council resolution 1422 (2002) for a further 12-month period should therefore be clear. We regret that the need is felt at this time to continue that resolution for a further year. However, now that the International Criminal Court is fully established, we hope that the Council will in future be able to draw comfort from the Court's effective and responsible operation and that, accordingly, the Council will see no need to continue this resolution.

The President (*spoke in Russian*): I call next on the representative of Jordan.

Prince Zeid Ra'ad Zeid Al-Hussein (Jordan) (*spoke in Arabic*): At the outset, Sir, I would like to congratulate you on your assumption of the presidency of the Security Council for this month and to wish you every success in discharging the tasks with which you have been entrusted. We have every confidence in your ability to fulfil your responsibilities. I would also like to thank His Excellency Ambassador Munir Akram, the Permanent Representative of Pakistan, for his distinguished efforts as President of the Council during the month of May.

(*spoke in English*)

On 16 June, four days from now, the first Prosecutor of the International Criminal Court (ICC) will be sworn in at a ceremony in The Hague. This will crown what has been an exceptional year for the Court and its establishment, beginning with the entry into force of the Rome Statute on 1 July 2002, followed two months later by the convening of the inaugural session of the Assembly of States Parties, the election of the first 18 judges of the Court in February of this year and the election of the Court's President and two Vice-Presidents at the inauguration of the Court held in The Hague only three months ago in the presence of Her Majesty Queen Beatrix of the Kingdom of the Netherlands, His Excellency Secretary-General Kofi Annan and a large ministerial gathering from the States parties and beyond.

The Court now has an address, a leadership and core personnel. The number of States that have acceded to the Rome Statute continues to rise. The ICC has been the recipient of more than 200 letters and claims and will, in due course, begin to function fully, once the Registrar has been appointed and the Office of the Prosecutor has been staffed.

It is in that overall context — with the final piecing together by some 90 member States, whose number is growing, of what we hold to be a more enlightened approach to addressing the excesses of humankind's regular recourse to brutality — that the Security Council now wishes to review Security Council resolution 1422 (2002).

Jordan, as a State party to the Rome Statute, is mindful of the tensions and compressions through which the Council has passed over the last 10 months, and we would not wish to create any further discomfort for the Council. While it is likely that the draft resolution now before the Council will be adopted shortly — and we take note of this — we remain equally convinced that the Council should in due course reconsider repeating such a decision.

For we are still concerned over how resolution 1422 (2002) has attempted to elevate an entire category of people to a point above the law — a concern exacerbated still further when thought is given to the revolting nature of the crimes covered by the Court's jurisdiction. The resolution is therefore, in our assessment, a misapplication of article 16, and a contravention of the Rome Statute. The resolution does not relate to the Council's being seized of any particular political situation, and the Council's interpretation of article 16 does not accord with the drafting history of that article. The resolution also reverses the default position established by the Rome Statute over which body — the Court or the Council — should be the first to take up individual criminal cases with relevance to current or former officials or personnel from a State not party to the Statute over acts or omissions relating to a United Nations-established or -authorized operation. Thus, we join others in believing that the Council should not be rewriting treaties previously negotiated by all States comprising the entire international community. The implications of this practice are obvious to all here today.

The International Criminal Court will soon become our permanent conscience where individual criminal responsibility is concerned. The Court will stay permanently in the background, deferring to the national jurisdictions of States that are willing and able to investigate claims and prosecute those accused of perpetrating the offences enumerated in the Rome

Statute. It will only come to the fore and itself exercise jurisdiction when States that should be taking up their responsibilities are unwilling or genuinely unable to do so. The ICC does not, therefore, seek to replace national jurisdictions; rather, by its permanent presence, it will remind them of their legal and moral obligations, and thus reinforce national court systems.

We also believe that the Court will, in good time, become the surest companion of global peace and a more welcome future. Furthermore, in view of our collective and, in many respects, lamentable past — with recurring episodes of genocide as well as the never-ending commission of war crimes and crimes against humanity — this could not come sooner. We appeal therefore to the Security Council to give some thought to the few modest points that we have attempted to put forward here today.

The President (*spoke in Russian*): I now call on the representative of Switzerland.

Mr. Staehelin (Switzerland): Allow me, Sir, to congratulate you on your assumption of the presidency of the Security Council for this month and to wish you every success. I also wish to thank the members of the Security Council for agreeing to hold an open debate.

The International Criminal Court (ICC) was established by a treaty, not by a Security Council resolution. The Rome Statute is a major achievement in the codification of international law today. It is very worrying to see the Security Council adopt a resolution that limits the scope of a treaty that is in force, when that treaty is in full conformity with the Charter. Switzerland disagrees both with the principle and the modalities of resolution 1422 (2002).

Resolution 1422 (2002) opposes, repeatedly, international criminal jurisdiction with respect to peacekeeping operations. That approach is mistaken. Far from contradicting each other, the Court and peacekeeping operations complement each other. Article 16 of the Rome Statute enables the Security Council, if necessary, to allow for a peace process by deferring criminal prosecution. However, it is conceived to be applied on a case-by-case basis. Article 16 cannot be used as a basis for granting blanket immunity to all participants in peacekeeping operations. Such a step presupposes that the International Criminal Court is in itself an obstacle to peace. We do not agree with that reasoning.

In any case, the preamble to the resolution notes that "States not Party to the Rome Statute will continue to fulfil their responsibilities in their national jurisdictions in relation to international crimes" (*resolution 1422 (2002), fifth preambular paragraph*). Whenever States actually fulfil their responsibilities, the International Criminal Court does not have jurisdiction.

Resolution 1422 (2002) clearly undermines a historic development. The fight against impunity must become more universal, with the support of everyone. The more it is pursued in a cooperative spirit, the more effective it will be. That is why Switzerland deplores the adoption and, even more, the prospect of renewing resolution 1422 (2002). Incidentally, any kind of automaticity would be contrary to the Statute.

In conclusion Switzerland reaffirms its full support for the International Criminal Court.

The President (*spoke in Russian*): I now call on the representative of Liechtenstein.

Mr. Wenaweser (Liechtenstein): My delegation wishes to thank you, Mr. President, and the other members of the Council for convening this open debate on a matter of utmost importance. We are also most grateful for the presence of the Secretary-General and for the comments that he offered this morning.

As a strong supporter of the International Criminal Court (ICC), Liechtenstein took the floor last year in the debate preceding the adoption of resolution 1422 (2002) and expressed its concerns regarding the implications and indeed the legality of that resolution. A renewal of the resolution for a further year has been proposed to the Council, and we understand that the Council will take action on this matter shortly. We thus wish to reiterate our principal points of concern regarding resolution 1422 (2002) and to emphasize that, to our mind, there must be no automaticity of renewal of a resolution that we consider deeply flawed.

Resolution 1422 (2002) invokes Chapter VII of the Charter of the United Nations without making a determination of a threat to international peace and security. That implies the notion that the ICC constitutes such a threat. Further, the resolution purports to be consistent with article 16 of the Rome Statute while in fact violating both the letter and the spirit of that provision. Article 16 was never intended as a tool to grant a priori immunity to a whole category

of persons. This latter point also leads to the broader question of the undermining of the international treaty-making system. The Security Council does not have the competence to adopt and interpret international treaties, and by attempting to do so, it weakens the system established by the Charter.

Those arguments, which have been presented in this Chamber and elsewhere since last summer, are still valid, of course, but the Council should also take into account the developments that have taken place since the adoption of resolution 1422 (2002). Most important, the General Assembly has elected an excellent and diverse bench of Judges and has entrusted the post of Prosecutor to an internationally renowned jurist. If the numerous and carefully drafted safeguards provided for under the Statute against frivolous and politically motivated prosecutions were not convincing enough to some, the competence and integrity of those senior officials should be. The Court will not make politics, but it will deliver justice.

The adoption of resolution 1422 (2002) has raised very serious questions concerning the role of the Security Council that the simple renewal of the resolution does not address. The greatest risk, however, lies in the possibility — unlikely as it is — of the relevance of such a renewed resolution to a concrete case that might arise under the Court's jurisdiction. In such an event, the Court would have to deal with the legality of the decision by the Council as an incidental question — an unfortunate but inevitable consequence of the questionable legal underpinning of the request made by the Council. Such a situation would necessarily upset the relationship between the Court and the Council, one of the most carefully balanced aspects of the Rome Statute.

Concerned as we are about the integrity of the Rome Statute, we nevertheless believe that resolution 1422 (2002) is more damaging to the Security Council itself than it is to the Court. Many of the comments offered a year ago and since make it clear that the resolution effectively raises questions about the credibility of the Council's action. At a time when the relevance of the Council — and thus of the Organization as a whole — is openly questioned by many critics, the Council would do itself a disservice by automatically or indefinitely renewing the provisions of resolution 1422 (2002).

The President (*spoke in Russian*): I now call on the representative of Greece.

Mr. Vassilakis (Greece): I have the honour to speak on behalf of the European Union. The acceding countries Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia, the associated countries Bulgaria and Romania, and the European Free Trade Association countries members of the European Economic Area Iceland and Norway declare that they align themselves with this statement.

At the outset, I should like to thank you, Mr. President, and all the other members of the Security Council for giving us the opportunity to express ourselves on this important matter.

The entry into force of the Rome Statute of the International Criminal Court (ICC), on 1 July 2002, and the subsequent establishment of the International Criminal Court, which became fully functional this year upon the election of the 18 Judges and the Prosecutor, constitute a major step in the progressive development of international law that will allow a long-standing dream of humanity — to put an end to impunity — to finally take shape. All States members of the European Union have ratified the Statute.

The ICC is not just a judicial institution designed to prevent and put an end to the impunity of the perpetrators of serious crimes that are of concern to all States, but is also an essential means of promoting respect for international humanitarian law and human rights law, thus contributing to freedom, security, justice and the rule of law, as well as to the preservation of peace and the strengthening of international security. The objectives of the Rome Statute are therefore in conformity with the purposes and principles of the Charter of the United Nations.

From the very outset, the European Union has been strongly supportive of the early establishment of the ICC and is, and will remain, firmly committed to its effective functioning. In our Common Position, adopted by the European Union Council of Ministers in June 2001 and reaffirmed in June 2002, we pledged to promote the widest possible participation in the Statute, to share our experiences with regard to its implementation and to provide technical assistance to the best of our ability. That Common Position is now in the process of being revised with a view to being consolidated and updated and to take into account new

developments, such as the adoption of the General Affairs and External Relations Council Conclusions on the ICC of 30 September 2002 and the Guiding Principles annexed thereto.

The promotion of the widest possible participation in, and the implementation of, the Statute in negotiations or political dialogues with third States, with groups of States or with relevant regional organizations, whenever appropriate, are declared objectives of the European Union. In addition, the European Union is determined to adopt initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments.

The European Union reiterates its belief that the concerns expressed by the United States about politically motivated prosecutions are unfounded, since those concerns have been met and sufficient safeguards against such prosecutions have been built into the Statute. Indeed, the latter contains substantive safeguards and fair-trial guarantees to ensure that such a situation will never arise. In addition, the European Union can now point to the high moral character and integrity of the 18 Judges and the Prosecutor of the Court, who have been elected from among the most highly qualified candidates in the world and who have given, or are about to give, a solemn undertaking to perform their functions impartially. Furthermore, the Statute incorporates the principle of complementarity, which places the primary responsibility for investigation and prosecution with domestic jurisdictions. The Court may assume responsibility as a last resort and only when a State is unable or unwilling to do so.

Among the various responses agreed upon by the drafters of the Statute to address the concerns that I have mentioned is article 16 of the Rome Statute. That article states,

> "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect."

In our view, the article should be invoked only in conformity with the Statute.

The European Union wishes to express once again its appreciation to the United States for that country's important contribution to peacekeeping missions around the world. We should also like to commend individual peacekeepers for their hard work and dedication in trying to maintain or restore peace and stability in risky, dangerous and volatile environments. It is the strong belief of the European Union that the ICC is no threat to peacekeeping, but a welcome safeguard to protect peacekeepers against serious crimes.

Security Council resolution 1422 (2002) states that the Council intends to renew the request contained in it for as long as may be necessary. It is clear that any necessity to do so should also be evaluated in the light of the positive effects that the International Criminal Court will have on peacekeeping. In stating this, the European Union would point to the significant number of personnel its member States contribute to peacekeeping operations. Our adherence to the Rome Statute should be seen as an indication of complete trust in the way peacekeepers operate under their mandate and, at the same time, in the necessity to properly investigate any allegations of criminal conduct on their part, if need be.

The European Union is of the view that the inclusion in resolution 1422 (2002) of the phrase

> "renew the request ... under the same conditions each 1 July for further 12-month periods for as long as may be necessary" (*resolution 1422 (2002), para. 2*)

cannot be interpreted as permitting the automatic renewal of that resolution without taking into account the specific conditions under which such a request is being made. The European Union firmly believes that an automatic renewal of that resolution would undermine the letter and the spirit of the Statute of the International Criminal Court and of its fundamental purpose — to put an end to impunity for the most serious crimes of concern to the international community by bringing to justice in all cases all those within the Court's jurisdiction.

Finally, we urge all members of the Security Council to do their utmost to reach a solution that will preserve the integrity of the Rome Statute and ensure the unimpeded continuation of peacekeeping operations.

The President (*spoke in Russian*): I now give the floor to the representative of the Islamic Republic of Iran.

Mr. Zarif (Islamic Republic of Iran): Allow me to join previous speakers in extending our congratulations to you, Sir, on having assumed the presidency of the Security Council. Our thanks also go to your predecessor for his excellent work. I wish also to thank you, Sir, for holding this open debate on such an important issue on the agenda of the Security Council, which is at the same time of great importance to the general membership of the United Nations.

The adoption and enactment of the Statute of the International Criminal Court (ICC) was a major leap forward in the progressive development of international law. Not only is the Court a judicial institution designed to investigate and prosecute acts of genocide, crimes against humanity and war crimes; its establishment is also a strong political statement in the fight against impunity for the most serious crimes of concern to the entire international community. It is an essential contribution to the preservation of peace and the strengthening of international security and, as such, the international community should not allow it to be undermined.

The Islamic Republic of Iran has signed the Statute of the International Criminal Court, which is now under consideration by the relevant Iranian authorities with a view to being presented to Parliament for ratification. We believe that the principles and values laid down in the Statute will enable the Court to become an effective organ for the international community to combat the most serious crimes and render justice to their victims.

This meeting gives us another opportunity to register our concern over a dangerous tendency to undermine international law and erode the credibility of this Council. What the Council is being asked to do needs to be approached with extreme care and scrutiny, especially in the wake of the unlawful military operations in Iraq, which followed the circumvention of the Security Council.

My delegation is concerned because resolution 1422 (2002), the renewal of which is being sought now, is legally disputed and considered to question the authority of a treaty-based international body, the International Criminal Court. The resolution unduly interfered with the Statute of the ICC, which is concluded among States in accordance with the law of treaties — a law that recognizes only parties to a treaty competent to interpret or amend it.

Moreover, the international community is cognizant of the fact that resolution 1422 (2002) could be adopted only after the extension of the United Nations mission in Bosnia and Herzegovina was threatened with a veto, as were other peacekeeping mandates that were to come up for renewal, thus jeopardizing the whole United Nations peacekeeping system. We understand that the members of the Council should act responsibly and in such a way as to not place in jeopardy the peacekeeping missions that have been and continue to be indispensable for maintaining peace and security in the areas of their operation. However, given the existing safeguards in the ICC Statute, as well as the very responsible statements that have been made by various officers of the Court, the insistence on extending the provisions of the resolution indefinitely would amount to seeking impunity for more serious crimes, including genocide, crimes against humanity and war crimes. We agree with the Secretary-General that the indefinite extension of this process undermines not only the ICC, but in fact the credibility of this Council and of the peacekeeping operations.

My delegation regrets that a unilateral approach, founded on a misplaced notion of placing one country above the law, has created an untenable and unsound situation in the Security Council and in international relations in general. Undoubtedly, such an approach runs counter to the spirit and letter of the United Nations Charter, especially Article 24, which maintains that the Council acts on behalf of the membership of the United Nations.

The President (*spoke in Russian*): I now give the floor to the representative of Uruguay.

Mr. Paolillo (Uruguay) (*spoke in Spanish*): Uruguay's position on the extension of resolution 1422 (2002) is reflected in the statement to be made by the representative of Peru in his capacity as Chairman of the Rio Group. Uruguay wishes to add a few comments on points of particular interest to it.

A year ago, the imminent establishment of the International Criminal Court (ICC) was greeted by the vast majority of the international community with deep satisfaction as the beginning of a new era in the history of international relations.

The entry into force of the Statute of Rome, to which Uruguay is a party, and the establishment of the ICC early this year were clear messages to the Governments and people of the world, announcing the beginning of the new era. This era, we all hope, will be remarkable not only because those responsible for the most serious crimes of international concern will henceforth be prosecuted, but also and above all because of the prospect that such crimes will not be committed, or at least not at the scale and frequency with which they have been committed during the past 60 years. In fact, we are convinced that the very existence of the ICC will act as a powerful deterrent, discouraging future potential criminals from committing the crimes listed in the Statute.

That is why we are concerned about the possibility of an extension of resolution 1422 (2002), given that we understand it affects the jurisdiction of the Court and consequently prevents the fulfilment of its functions as provided for in the Statute.

Apart from its very questionable legal foundations — an issue on which I shall not dwell, because previous speakers have addressed it — a decision establishing that no investigations or prosecutions shall commence or proceed with respect to certain categories or classes of individuals seems unnecessary to us. The Statute provides more than adequate guarantees that the decisions taken by the Court will be neither arbitrary nor politically motivated. The moral and intellectual qualities of the current judges and of the Prosecutor-elect provide additional guarantees. Furthermore, we must not forget the principles that govern the functioning of the Court and the office of the Prosecutor, among which I would point out the principle of non-retroactivity and the subsidiary or complementary nature of the jurisdiction of the Court with respect to national jurisdictions.

Moreover, resolution 1422 (2002) introduces a curious kind of discrimination among perpetrators of the most hateful crimes: on one hand there are criminals who may be judged or sentenced for their crimes, and on the other hand those who may act under the protection of immunity. I would like to remind the members of the Security Council that the more than 1,800 Uruguayan civilian and military personnel who are currently participating in operations established or authorized by the United Nations have accepted the possible consequences of the commission of criminal acts described in the Rome Statute. In such discrimination among peacekeepers, Uruguay sees a deep injustice. It is Uruguay's understanding that all peacekeepers must be subject to the same rules and must enjoy the same status.

Uruguay is confident that future resolutions related to the International Criminal Court that this Council might adopt within its competence will be aimed at consolidating and strengthening the Court's function of dispensing justice, while respecting its integrity. We are of the view that the attempt to extend or automatically renew resolution 1422 (2002) does not appear to contribute to that purpose.

The President (*spoke in Russian*): I call now on the representative of Malawi.

Mr. Lamba (Malawi): I join preceding speakers, Sir, in congratulating you on your assumption of the presidency of the Security Council for the month of June. Our congratulations go also to Pakistan on its stewardship of the Council as President for the month of May. My delegation wishes to assure you, Mr. President, of its continued strong support and cooperation as you diligently steer the business of this important organ towards a successful conclusion.

The gravity of this debate is beyond question. The issue currently before the Council is important for the integrity of the United Nations Charter in its role as the gatekeeper of international peace and security. It is delicate, as it touches on the very foundations of durable peace, stability, equality and justice, namely, international law and international humanitarian law.

Just to put this matter in context, let me recall that following the broad-scale atrocities of the Second World War, the victorious Powers decided — fortunately — to bring to justice those who had perpetrated grievous crimes against humanity and peace. To that end, two international judicial bodies were established, namely the Nuremberg and Tokyo tribunals.

With a view to offsetting the shortcomings inherent in those two ad hoc tribunals, the question of a permanent international tribunal was raised in the late 1940s and the early 1950s within the context of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. This gave rise to a debate on having the Nuremberg tribunal further elaborated, leading to a motion by the Latin American and Caribbean States for the creation of an international

criminal court. Regrettably, not much progress was achieved for a long time afterwards.

However, the gross injustices, massacres and human rights abuses that accompanied the policy of ethnic cleansing in the former Yugoslavia in the early 1990s, and the infamous Rwanda genocide of 1994 gave added impetus to longstanding calls for a permanent international criminal tribunal going beyond the legal scope and criminal jurisdiction of the two original tribunals of the late 1940s, which were perceived to have had shortcomings.

That historical context is necessary to serve as a reminder to all gathered here about the painstaking and arduous negotiations that have taken place over the past five decades, culminating in the 1998 United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, a product of universal courage and resolve. The noble task of making the Court work remains our imperative in the twenty-first century.

The International Criminal Court has been more than 50 years in the making and remains the single most important intergovernmentally agreed legal framework for ending impunity for all manner of war crimes and other crimes against humanity.

Without a credible intergovernmental mechanism to correct and punish the wrongs of man against fellow man, such as that offered by this permanent criminal tribunal, global peace and stability could not be assured, and anarchy would continue to reign supreme in politically troubled flashpoints — such as Africa, where the vast majority of United Nations peacekeeping missions are deployed.

Council resolution 1422 (2002) is likely to reverse the positive gains and historic milestones of the Rome Diplomatic Conference, and goes against the spirit behind the Rome Statute. The resolution weakens an earnest global collective crusade against the recurrence of the humanitarian catastrophes of, for example, Cambodia, the Balkans and Rwanda, Sierra Leone and other parts of Africa where civil wars and war crimes are currently raging and where crimes against humanity may be taking place. My delegation appeals for careful consideration of the advantages of the International Criminal Court as a deterrent to crimes and in the promotion of global peace.

Our concerns should be seen in the light of the need to consolidate the commendable achievements of the International Criminal Court since the coming into force of the Rome Statute on 1 July 2002. The Assembly of States Parties, now 90 strong, has held three successful rounds of consultations since its inaugural session in September 2002. The Court's functionality was sealed by the operationalization of its legal instruments following the successful conclusion in July 2002 of a four-year preparatory process. Further, the Court was able to elect its first 18 Judges early this year. These have since elected a President. The Prosecutor is now in post and the recruitment of other principal officers and support staff of the Court is well under way, thereby making the Court practically up and running.

Those developments bear strong testimony to the solemnity with which United Nations Member States view the Court's potential contribution to the promotion of the international rule of law. Any move at this critical juncture for exemptions to the Rome Statute will without doubt open up this nascent international instrument to fresh and expensive negotiations that would negatively affect its thrust.

Renewing this resolution would also serve to erode the newly emergent global political will to promote the momentum created by the International Criminal Court to fight repugnant crimes against humanity. It is important to note that resolution 1422 (2002) has inimical effects on international law, international humanitarian law and the spirit of multilateralism in international affairs, and on the criminalization of acts and behaviours in armed conflict that confound the human conscience.

If this draft resolution should be adopted, as seems likely, nothing will stop it from evolving perforce into a permanent fixture on the Council's rule-making platform. In that way, we shall have failed those who, in one way or another, needlessly paid the ultimate price and are now seeking justice and appropriate redress, which only the Rome Statute can guarantee.

It is the ardent hope of my delegation, as a State party to the Rome Statute, that reason and justice will prevail as we tread down this delicate path, and that a strong attempt will be made to preserve the international rule of law through a renewed joint global effort to support the consolidation of the ideals and

purposes of the Rome Statute, as well as the universality and integrity of the International Criminal Court, whose safeguards reside in the Rome Statute alone.

The President (*spoke in Russian*): I call next on the representative of Brazil.

Mrs. Viotti (Brazil): Let me commend you, Mr. President, for taking the timely decision to convene this debate. We support that initiative, which was proposed by Canada, Jordan, Liechtenstein, New Zealand and Switzerland. This debate gives us the opportunity to discuss two specific subjects that are crucial to our efforts to build an international order based on peace and security and founded on international law.

The entry into force of the Rome Statute of the International Criminal Court (ICC), on 1 July 2002, was a landmark in the history of the United Nations and a key element in the enforcement of international law. Only 11 days afterwards, however, the Security Council adopted resolution 1422 (2002). This is a sensitive issue, given the resolution's possible implications for that international treaty.

It is not the intention of the Brazilian Government thoroughly to analyse those events and developments here. We voiced our position in that regard at last year's debate.

The creation of the ICC is the realization of what was once only a dream. We now have an instrument to ensure that the most dreadful crimes against basic human rights will no longer remain unpunished. The adoption of resolution 1422 (2002) stemmed from a concern that that instrument might be misused. Some States fear that the aims of the ICC could be distorted and that this could lead to politically motivated accusations against their nationals. Brazil is nevertheless firmly convinced that those concerns have already been addressed by the Rome Statute. In view of that, it seems clear that the ICC provides all the necessary checks and balances to prevent possible abuses and politically motivated misuse of its jurisdiction. Thus, efforts to secure broad immunities from the potential jurisdiction of the Court are, in our view, unnecessary.

For reasons already stated, Brazil is concerned about proposals and initiatives that seek to reinterpret or review the Rome Statute, in violation of the practice of international law and of the Vienna Convention on the Law of Treaties. The Statute is an international treaty that contains specific procedures for amendment that should be observed. The Brazilian Government is ready to work towards alternative satisfactory solutions that are legally sound and that preserve the integrity of the Statute in both its letter and its spirit.

Brazil is concerned at the possible renewal of resolution 1422 (2002) exempting peacekeepers from the jurisdiction of the ICC, as we believe that peacekeeping operations and the institution of the International Criminal Court are two important pillars in realizing the goals of the United Nations. We must ensure that both instruments work in a coherent and mutually reinforcing manner. The maintenance of international peace and security and the repression of serious crimes cannot be viewed as conflicting objectives.

We believe that the success of the ICC depends upon the continuing support it receives from its States parties and from the international community as a whole. Public opinion has on several occasions demonstrated that it clearly stands behind the objectives of the ICC and the denial of safe havens to impunity.

Initiatives aimed at extending the exemptions of certain categories of individuals from ICC jurisdiction must not be carried out at the expense of the effectiveness of the historic achievement represented by the entry into force of the Rome Statute, which represents a major step towards preventing continuing impunity for the worst sorts of crimes. Efforts that may have the effect of dismantling such an achievement do not serve the cause of justice.

The President (*spoke in Russian*): I call next on the representative of Peru.

Mr. de Rivero (Peru) (*spoke in Spanish*): First of all, I would like to congratulate you, Sir, on your assumption of the presidency of the Council for this month. I would also like to extend my good wishes in connection with today's national day in the Russian Federation.

Peru has the honour to speak before the Council on behalf of the States members of the Rio Group, namely, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico,

Nicaragua, Panama, Paraguay, Uruguay, Venezuela and Peru.

We are pleased, Sir, that you have convened this open debate to once again take up the issue of operations established or authorized by the Security Council and which may be linked to the International Criminal Court (ICC).

The Rio Group is pleased that the International Criminal Court has already been established. In addition to the election of a diverse and representative group of judges, who were sworn in in March 2003, Mr. Luis Moreno Ocampo has been elected as the Court's Prosecutor and will assume his position on 16 June 2003. The fact that this position has been entrusted to a distinguished citizen of Argentina brings honour to our region and strengthens our commitment to this process.

The international community needs international law. We have the collective responsibility to combat war crimes, genocide and crimes against humanity. The relevance of the International Criminal Court lies in the fact that it will confront such crimes, which constitute the most serious assaults upon mankind.

The Security Council's debates and decisions should strengthen international cooperation in order to give impetus to, and promote the development of, respect for human rights and a system of international justice that is permanently respected and implemented. Those are the basic purposes and principles set out both in the Charter of the United Nations and in the Rome Statute of the International Criminal Court.

We are aware that the Council is considering an extension of the request for an exception adopted last year. In that regard, it is the understanding of the Rio Group that adopting the draft resolution will not make the exemption permanent.

We are convinced that, apart from any unexpected eventualities, the Security Council will continue to contribute to strengthening the International Criminal Court in accordance with its obligation to maintain international peace and security.

The Rio Group believes that the relationship between the Security Council and the International Criminal Court should be one of cooperation, because their responsibilities and functions for humanity are thoroughly complementary. The Rio Group will therefore continue working to promote the future strengthening of that relationship.

The President (*spoke in Russian*): I thank the representative of Peru for his kind words in connection with the national day of the Russian Federation.

I call next on the representative of Trinidad and Tobago.

Mr. Edghill (Trinidad and Tobago): Allow me to congratulate you, Sir, on your assumption of the presidency of the Council and to wish you every success during your tenure. The delegation of Trinidad and Tobago would like to express its appreciation for the Security Council's decision to hold this open debate in a format that affords Member States the opportunity to express their views on this important issue of international law.

Since the reintroduction in 1989 by the former President of Trinidad and Tobago of the item on the establishment of an international criminal court on the agenda of the United Nations, my country has remained firmly committed to the International Criminal Court and to the Rome Statute. We continue to uphold the objectives of the Statute and are concerned by any measure that would erode its integrity. We also remain committed to the purposes and principles of the Charter of the United Nations and continue to attach importance to international peace and to the security of United Nations operations.

The international community, through a collective effort over several years of painstaking negotiations, created the International Criminal Court as an independent, impartial and effective tool to bring to justice the perpetrators of crimes that shock the conscience of mankind: crimes of genocide, war crimes and crimes against humanity.

The Court is also intended as an avenue of justice for the victims of those crimes and for their families. The clear message sent by the international community upon the adoption of the Rome Statute was that impunity for such horrendous crimes will no longer be tolerated.

As a State Party to the Rome Statute, Trinidad and Tobago views with concern the proposal to renew resolution 1422 (2002) for a further period of 12 months, for various reasons. First, the resolution itself is inconsistent with the provisions of the Rome Statute since, by granting blanket immunity from prosecution

before the Court to a defined category of personnel of non-States parties participating in United Nations-authorized missions, it contradicts the true intent of article 16 of the Rome Statute. It is not the purpose of article 16 to grant immunity from prosecution by the Court to any category of persons, including personnel of non-States Parties. It was intended to be applied on a case-by-case basis in Chapter VII situations. Since article 16 was intended to be invoked on a short-term basis only, any continuous renewal on an annual basis, without establishing the necessary Chapter VII situation contemplated by the drafters of the Statute, would be incompatible with the objective of the Statute: to bring to trial all persons accused of the crimes within its jurisdiction.

Secondly, the Rome Statute is a package that brings together the diverse interests and concerns of Member States. It contains a comprehensive regime of safeguards aimed at ensuring that prosecutions are fair and warranted and are not politically motivated. The very principle of complementarity obliges the Court to defer to national prosecutions and places the primary responsibility upon States to prosecute their nationals responsible for crimes within the jurisdiction of the Court. The Court will act only in very limited circumstances and then only after observing the numerous procedural safeguards in the Statute. In the light of this, the exemption granted by the Council through resolution 1422 (2002) to a certain category of persons would appear to be unnecessary and unwarranted.

Finally, with respect to the Council's intention, as expressed in the resolution, to renew the request for deferral of prosecution under the same conditions every 1 July for a further 12-month term for as long as may be necessary, we consider its initial adoption — as we do its proposed renewal at this time — to be contrary to the United Nations Charter in that the Security Council did not make then — nor has it made now — a determination regarding the existence of a threat to the peace, a breach of the peace or an act of aggression, which would constitute the basis for invoking Chapter VII of the Charter, as well as article 16 of the Rome Statute.

As a small State committed to international law, Trinidad and Tobago would encourage the members of the Council in their consideration of the renewal of the resolution to consider carefully the implications that its continued application would have for international law and international relations. We therefore urge Council members in their deliberations to strive to uphold the application of international law and the United Nations Charter and to preserve the letter and the spirit of the Rome Statute, which is designed and fully equipped to complement the work of the Council in the pursuit and preservation of international peace and security.

The International Criminal Court is a new institution and is in the process of being consolidated. It is an instrument whose goal is the promotion of international peace, an objective that is common to all members of the international community. We consider that any action that threatens to undermine the integrity of the Rome Statute at this time should be firmly resisted. It is our hope that when the Court is fully operational and when the international community has been assured of its effectiveness and its independence and has seen its successes, the Security Council will no longer find it necessary to renew the resolution.

The President (*spoke in Russian*): I call next on the representative of Argentina.

Mr. Listre (Argentina) (*spoke in Spanish*): I would like to congratulate you, Sir, on your assumption of the presidency. I would also like to extend my congratulations in connection with the national day of the Russian Federation, a country for which I have particular affection, nourished during the years when I had the honour of representing my country there.

The Argentine delegation would like to thank you, Mr. President, for convening this debate and would like to associate itself with the statement made by Peru on behalf of the Rio Group. As we said last year, the issue that we are debating today is of great importance because it affects two essential elements of international relations, peace and justice, which cannot be, nor should be, considered to be contradictory or discordant. Rather, on the contrary, they should be viewed as essential for one other.

The International Criminal Court is an institution that is already functioning. Its judges have been elected. The Prosecutor will assume his duties next Monday. And the remaining steps necessary for its establishment are being finalized. The international community has taken forward the establishment of the Court and its functioning with speed, effectiveness and determination. The Criminal Court was not established to administer justice in a vacuum. On the contrary, the history of the negotiating process and the balanced

nature of its provisions clearly reflect its objective of reconciling the interests of the international community as a whole with national objectives of State sovereignty and security. Its rules also reflect the determination to establish a framework that makes the Court's role compatible with the needs of the collective security system.

Resolution 1422 (2002) was adopted last year following a situation created by the renewal of the mandate of the United Nations Mission in Bosnia and Herzegovina. We hope that the exception adopted by the Security Council in that resolution, and once again submitted for the Council's consideration, will not become a permanent exception, which would neutralize the status of the Court.

The Statute offers the necessary guarantees to ensure that the Court will exercise its jurisdiction only in cases within its competence. Even in such cases, the Court first must exhaust the principle of complementarity, allowing the competent national jurisdiction to consider and decide on the issue. This is why we cannot explain fears or doubts about the Court by a country that has trust in its own legal system and the effectiveness of that system. If, however, a case finally comes before the Court for decision, we are sure that the Judges and the Prosecutor, whose qualifications and background speak for themselves, will carefully consider it and will prevent the slightest suspicion of political motivation or partiality.

For decades, the international community has pursued the establishment of a court that would be able to judge the most serious international crimes. The end of the cold war broke the stalemate that prevented States, in a joint undertaking with civil society, from laying the foundations of the Court. The painstaking negotiations that led to the Rome Statute achieved a delicate balance that, without distorting the purposes of the Court, took into consideration States' legitimate concerns. It is important to maintain that balance, ensuring the integrity of the Rome Statute.

The Court is a necessary tool to ensure the effective universal application of basic human rights. The process of ratification of the Statute is progressing steadily. Thus, the international community is demonstrating that this institution warrants credibility and support. We hope that this debate will help to overcome fears or doubts — which in our opinion are not valid — vis-à-vis the Court. The Rome Statute is not in conflict with the system established in the United Nations Charter. On the contrary, the Court will help to strengthen the maintenance of international peace and security through its sheer existence; and this will be a deterrent to the potential authors of monstrous crimes that fall within its competence. That is why we think that there is no contradiction; nor is there a need to choose between them.

The President (*spoke in Russian*): I thank the representative of Argentina for his kind words about the Russian Federation.

I now call on the representative of South Africa.

Mr. Kumalo (South Africa): Mr. President, allow me to start with the good news: I wish you a very happy national day today. Also, let me congratulate you on assuming the presidency of the Council for the month of June. I also wish to express my thanks to the delegation of Pakistan for having guided the Council so well last month. So much for the good news.

A year ago, we met in this Chamber to debate the issue that finally led to the adoption of resolution 1422 (2002). At the time, many delegations, including my own, spoke out against the draft resolution, which sought to grant immunity from the jurisdiction of the International Criminal Court (ICC) to personnel from States not party to the ICC Statute that are involved in United Nations-established or -authorized missions.

Many delegations expressed the view that it was an inappropriate action on the part of the Security Council to use its authority under Chapter VII of the United Nations Charter to call into question the authority of the International Criminal Court conferred upon it by an international treaty. The Council decided, nonetheless, to adopt the resolution. That action cast a shadow on the integrity of the ICC Statute, the Criminal Court itself and the application of international law.

One year later, the Council is called upon to agree to a renewal of the resolution for a further 12 months, an action that would allow this situation to continue and that might eventually lead to the resolution being extended indefinitely. That, in the view of my delegation, would be unacceptable, and we call on members of the Security Council to refrain from allowing this situation to continue.

The establishment of the International Criminal Court is undoubtedly one of the major achievements of

the international community in its campaign against impunity in its promotion of international criminal justice. All Member States participated in the process that led to the adoption of the Rome Statute, and in the work of the Preparatory Commission that resulted in the Court becoming a reality. The fact that there are currently 90 States parties attests to the widespread support the Court enjoys, and the number of pending ratifications clearly indicates the Court's universal acceptance. It is also encouraging that the Court is now fully operational and will soon be in a position to take on cases.

The creation of the International Criminal Court is evidence of an emerging norm in international law that would ensure that those accused of the most serious crimes, such as genocide, crimes against humanity and war crimes, are either prosecuted by competent national authorities or handed over for prosecution by a duly instituted international court. We would hope that the Security Council would actively promote this emerging norm in international law.

We once again urge the Security Council — the same Council that is entrusted with the maintenance of international peace and security — to use its authority wisely and in the interest of humankind as a whole, and not to allow itself to jeopardize the ICC or to frustrate the ends of international criminal justice.

The President (*spoke in Russian*): I thank the representative of South Africa for what he called the good news.

I now call on the representative of Nigeria.

Mr. Mbanefo (Nigeria): Sir, let me extend to you warm congratulations on your assumption of the presidency of the Security Council for this month, and also, through you, to your predecessor, Pakistan, on the able manner the affairs of the Council were directed last month. Let me also join other friends of the Russian Federation in wishing you congratulations on your national day today.

Members of the United Nations have collectively conferred on the Security Council the primary responsibility for the maintenance of international peace and security, under Article 24 of the Charter. In a conscious effort to ensure the pacific settlement of disputes between and among sovereign States, the International Court of Justice was established, along with the other specialized international arbitral bodies. However, those bodies deal only with inter-State disputes.

Global resentment against impunity and against individuals who have committed crimes against humanity was first expressed in the establishment of the International Military Tribunal at Nuremberg in 1945. The same resentment also informed the establishment of the International Criminal Tribunals for the trial of those accused of impunity in the former Yugoslavia and in Rwanda. Furthermore, the establishment of the Special Court for Sierra Leone and the ongoing plans to establish one in Cambodia were born out of the same considerations. Regrettably, the ad hoc nature of these courts and tribunals not only makes them expensive, but also greatly limits their scope and effectiveness.

It is to remedy the shortcomings and the proliferation of such ad hoc judicial bodies that the International Criminal Court was established. In that regard, it is gratifying to recall that the 18 judges of the Court, who were elected in February 2003, have since been inaugurated, on 11 March 2003. It is also encouraging that the Prosecutor of the Court was elected by consensus, thus giving overwhelming credibility and acceptability to that office.

As I speak, the Court has 90 States as members. This contrasts with the 60 States that were members at its inauguration on 15 July 2002. This encouraging growth indicates that the Court is seen as necessary in the global fight against impunity. The Court will serve the global community creditably as a permanent international criminal judicial institution.

Nigeria recognizes the non-retroactive nature of the jurisdiction of the Court: the Court can consider only crimes committed after 15 July 2002. By the same token, we appreciate that the Court will exercise jurisdiction only when national jurisdictions are either unable or unwilling to carry out investigations or prosecutions of crimes under article 17 of the Statute. Given the international stature, professional competence and integrity of the Prosecutor as well as the individual integrity and competence of the judges, the Court cannot be expected, by any stretch of the imagination, to undertake frivolous prosecutions. We are convinced that the safeguards provided will guarantee and protect genuine national concerns. For that reason, we wish to urge States that are not yet Parties to the Statute to become so. For our part, we

wish to reaffirm our commitment to the integrity of the Court.

One principal way of maintaining international peace and security is through peacekeeping operations under Chapter VII of the Charter. My delegation is convinced that article 16 of the Rome Statute was intended to facilitate peacekeeping operations authorized by the Security Council. Accordingly, Nigeria holds the view that the Court would normally exercise jurisdiction in respect of all cases arising from peacekeeping operations unless the Security Council has invoked the provision of article 16. The article was thus intended to be invoked in a practical situation as demonstrated and reinforced by article 13 (b) of the Rome Statute, which provides for

> "A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations."

It is our view that article 16 was intended to be invoked by the Security Council only after a crime under article 5 is alleged to have been committed by a member or members of a United Nations peacekeeping operation. Furthermore, the allegation must be under investigation by the Prosecutor with a view to carrying out prosecution in the Court. It follows that article 16 was not intended to be invoked pre-emptively or in anticipation of future crimes by United Nations peacekeeping personnel in a mission area.

Although the judges and other principal officers of the Court have been elected, the Court is not yet fully operational or functional, and is thus unable to receive requests from the Security Council as envisaged under article 16 of the Statute. Indeed, the renewal of resolution 1422 (2002) has the potential of undermining the integrity of the Court and impedes the implementation of the rule of law and international humanitarian law. Nigeria holds the view that the invocation of article 16 of the Rome Statute with respect to the renewal of resolution 1422 (2002), in the present circumstances, is unnecessary. Consequently, we urge members of the Council to exercise restraint in the use of that article and stress that the article be invoked constructively and only to further the intended cooperation between the Security Council and the International Criminal Court.

Just as international terrorism is an affront to civilized conduct and a threat to international peace and security, so also are impunity and crimes against humanity an affront to the world's conscience, and indeed a threat to international peace and security. Therefore, as the Security Council is proudly leading the international community in the global fight against international terrorism, so also should the Council lead in the fight against impunity by helping to nurture the newly established International Criminal Court. For the Council, that role has become inescapable given the fact that it has primary responsibility for the maintenance of international peace and security as well as for keeping the conscience of the world.

The International Criminal Court offers the international community a unique opportunity to write the final chapter of global resentment against impunity and crimes against humanity. Let us therefore accept and assume our collective and individual responsibilities in that regard. To do otherwise would be a disservice to humanity.

The President (*spoke in Russian*): I now give the floor to the representative of the Democratic Republic of the Congo.

Mr. Mukongo Ngay (Democratic Republic of the Congo) (*spoke in French*): Allow me at the outset, Sir, to say how pleased I am to see you preside over the Security Council this month. I am convinced that you will accomplish your lofty objectives selflessly and successfully. Allow me also to commend your predecessor, the representative of Pakistan, for the skill and competence that he brought to bear on his difficult work during his presidency last month. I would also like to thank you for the welcome initiative of convening this important Security Council meeting and to hail all members of the Council for agreeing to add today's debate to their programme of work.

The issue of renewing resolution 1422 (2002) requires my delegation to take up the following three essential points in its statement: first, the importance of the International Criminal Court; secondly, my country's commitment to the Court; and thirdly, the advisability or necessity of renewing resolution 1422 (2002).

The International Criminal Court, whose Statute entered into force on 1 July 2002, is for us an unprecedented instrument in the world judicial system, especially given its permanent nature, which

distinguishes it from previous institutions, in particular the ad hoc tribunals that are now responsible for examining the consequences of civil wars. This is an important historical step forward that marks the end of the Stalinist aphorism, which Secretary-General Kofi Annan once described as a cynical vision, according to which one death is a tragedy whereas 1 million deaths are a statistic.

For humanity, the International Criminal Court is the crowning achievement in its struggle against impunity for the most serious crimes that have long shocked our collective conscience. The concept of combating impunity is in no way opposed to the mission of the Council. On the contrary, it complements the maintenance of international peace and security, a principle that is cherished by this body.

As one speaker said during the ceremony marking the deposit of the sixtieth instrument of ratification of the Statute of the Court, on 11 April 2002, it is an illusion to believe that a society can attain peace and stability without trying to bring to light crimes committed, determine the responsibility of the perpetrators and give restitution to the victims.

At a moment in history such as this, when the trend towards creating ad hoc courts seems to be waning, countries such as mine — where the gravest crimes have been committed and are still being committed — must re-establish the rule of law by prosecuting the perpetrators of such crimes in their own courts, by virtue of the sacred principle of complementarity instituted by the Statute of the Court.

My country will never cease to recall that its commitment to the International Criminal Court freedom reflects a true attachment to the principles of freedom, democracy and respect for human rights and fundamental freedoms. Accordingly, my country was among the 120 States of the 160 present that voted to adopt the final text of the Statute of the International Criminal Court at the conclusion of the July 1998 Rome Conference. That commitment was reaffirmed on 11 April 2002, when my Government decided to offer to the international community the sixtieth ratification, which marked the Statute's entry into force.

My country wishes to reaffirm its commitment to and support for the International Criminal Court, a Court whose independence in relation to the Security Council bodes well for the attainment of the objectives of its mandate. Moreover, it continues to hold that an International Criminal Court provided with every possible guarantee that it will function well and cleared of suspicions of political influences and partiality will eventually rally the whole world to its cause. That is why my country appeals for respect for the integrity of the Court's Statute.

Because Council members will vote shortly on a renewal of resolution 1422 (2002), I should like to remind them of history. On 9 December 1948, the General Assembly, one of the principal organs of the Organization, in its resolution 260 B (III), requested the International Law Commission to create an international jurisdiction charged with trying persons charged with genocide or other crimes under its jurisdiction. The international community's efforts to give effect to that request resulted in the holding at Rome in 1998 of the historic United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Statute that was adopted entered into force on 1 July 2002. As of today's meeting, the 18 judges mandated to sit upon the Court have already been elected. The Court's inauguration took place on 11 March 2003, along with the swearing in of the judges. The first Prosecutor of the Court has been elected and is to be sworn in next Monday; 90 States have now ratified the Court's Statute.

As one can see, the essential steps have been completed, and the Court's establishment has drawn to a close. So, will the Security Council be ready to assume the historic responsibility of steadfastly assisting the Court? In the wake of the Second World War, it was believed that such an institution must be established.

Because paragraph 2 of resolution 1422 (2002) is only an optional clause and not a mandatory provision, my delegation wonders about the advisability or the real necessity of renewing resolution 1422 (2002) at a time when our generation wants to have a chance to see the functioning of the first international and permanent legal jurisdiction charged with prosecuting the most odious crimes, which are revolting to the conscience of humanity.

Now that the Court's establishment is complete, we think that we should give it the opportunity and the freedom to prove itself, in particular by initiating the prosecutions of those who are still massacring civilian populations and engaging in massive violations of

human rights and of international humanitarian law throughout the world. Above all, it should play the greatest role that the world can expect of it: preventing criminals, through the threat of prosecution, from accomplishing their filthy work.

Finally, my country hopes that the International Criminal Court will truly be a gift of hope for future generations and a giant leap forward in the march towards the universalization of human rights and the primacy of law, as Secretary-General Kofi Annan has stated. The International Criminal Court fights against impunity; the Security Council maintains international peace and security. We favour the full functioning of both bodies.

The President (*spoke in Russian*): I now call on the representative of the Netherlands.

Mr. van den Berg (Netherlands): The Netherlands, as host nation to the International Criminal Court (ICC), is very grateful for this opportunity to speak in an open meeting of the Security Council. The Netherlands fully concurs with the statement made earlier by the Greek Presidency of the European Union and will therefore be brief.

The Netherlands is in a position to witness daily the developments at the International Criminal Court. Its establishment has been conducted in an effective manner. The judges were inaugurated at The Hague on 11 March this year, and they meet the stringent requirements that the Statute set. The very competent Prosecutor will be inaugurated next Monday at the Peace Palace in The Hague. In short, the International Criminal Court is ready to take up its important task.

The Netherlands fully endorses the view that article 16 of the Rome Statute should be invoked in conformity with the Statute. The article reads in part,

> "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect."

From both the text and the preparatory work behind the article, it follows that the article allows deferrals: first, only on a case-by-case basis; secondly, only for a limited period of time; and thirdly, only when a threat to or a breach of peace and security has been established by the Security Council under Chapter VII of the Charter. In our view, article 16 does not sanction blanket immunity in relation to unknown future events. The Secretary-General followed that line of reasoning before the adoption of resolution 1422 (2002) as well.

The Netherlands has committed itself to defend and advocate the integrity and credibility of the International Criminal Court and the Rome Statute. The Netherlands firmly believes that resolution 1422 (2002) undermines the letter and the spirit of the Statute and of the ICC, and that therefore a repeated renewal is to be rejected. Adoption of the draft resolution before the Council today should not in any way be interpreted as moving in the direction of automatic yearly renewal.

The President: May I respectfully remind everyone present that mobile phones are equipped with a silent mode. I understand that it is not very easy for all of us to use that modern technology, but I can assure everyone that it is not that difficult, and, if they do so, they will still be in a position to communicate with the real world outside this Chamber while at the same time showing respect for their colleagues.

(*spoke in Russian*)

We have heard the last speaker inscribed on my list under rule 37.

Members of the Council have before them document S/2003/630, which contains the text of a draft resolution prepared in the course of the Council's prior consultations.

It is my understanding that the Council is ready to proceed to the vote on the draft resolution before it. Unless I hear any objection, I shall put the draft resolution to the vote now.

There being no objection, it is so decided.

I shall first give the floor to those members of the Council who wish to make statements before the voting.

Mr. Akram (Pakistan): I would like to express my delegation's gratitude to you, Sir, for having organized this consideration of the draft resolution contained in document S/2003/630 at this public meeting.

I would also like to welcome the statement which was made this morning to the Council by the Secretary-

General. We have taken due note of his statement and views.

The issue which is under consideration in the draft resolution is an important one for all countries. Pakistan is committed to upholding the rule of international law in accordance with the principles of the United Nations Charter. Pakistan also fully supports the need to provide justice to victims of crimes against humanity, genocide and other serious violations of international humanitarian law. It is only thus that we can hope to establish the rule of law in international relations.

Pakistan believes that international crimes, especially crimes against humanity, must not enjoy impunity. Where such crimes are committed, especially in conditions of foreign occupation or alien domination and where State terrorism is utilized to suppress the legitimate freedom struggles of peoples, they must be punished. In the first instance, the actions required should be taken by the national authorities. Where all such national measures of redress have been exhausted or are unavailable or inactive, recourse can be had to available international mechanisms.

It was in this spirit that Pakistan voted in favour of the Rome Statute of the International Criminal Court (ICC) at the United Nations Diplomatic Conference of Plenipotentiaries in 1998. We have noted developments since then, especially the coming into force of the Rome Statute on 1 July 2002 and, most recently, the establishment of the International Criminal Court in The Hague in March this year. We hope that the existence of the Court will act as a deterrent to serious violations of international humanitarian law, crimes against humanity and war crimes.

However, it is unfortunate that the Rome Statute did not provide for reservations by countries. This may have ensured wider adherence to the Statute. There are several provisions of the ICC Statute with respect to which Pakistan has certain concerns. These include the mechanism for initiation of proceedings, provisional arrest, provisions dealing with armed conflicts not of an international character and the question of immunity of heads of State or Government.

Pakistan is the largest contributor to the United Nations peacekeeping operations at present. We believe that United Nations peacekeepers should not be exposed to any arbitrary or unilateral action by any national or international body. This possibility could further reduce the incentives for Member States to offer United Nations peacekeeping forces. Pakistan reserves for itself the right to adjudicate in cases involving Pakistani peacekeepers in all peacekeeping operations and duties.

This is the primary concern which has inspired the present draft resolution, as we understand it, no matter how unlikely the circumstances it envisages. Therefore, Pakistan supports the objective of the draft resolution. We of course understand and respect the position taken by those States which have expressed reservations regarding the renewal of resolution 1422 (2002). We believe that annual renewal may be avoided in future through separate arrangements.

While supporting the draft resolution, Pakistan strongly adheres to the position that the Security Council, despite its wide authority and responsibilities, is not empowered to unilaterally amend or abrogate international treaties and agreements freely entered into by sovereign States. The powers of the Security Council are constrained under paragraph 2 of Article 24 of the United Nations Charter, which obliges it to discharge its duties in accordance with the purposes and principles of the Charter. Article 1 of the Charter provides that measures to maintain international peace and security shall be "in conformity with the principles of justice and international law". The Council's decisions cannot and do not override these provisions of the Charter.

Mr. Tidjani (Cameroon) (*spoke in French*): At the outset, allow me on behalf of the delegation of Cameroon to congratulate you, Sir, on the occasion of your country's national holiday. I also wish to thank the Secretary-General for the statement he made early in our meeting, which placed our debate in its true context.

My delegation is grateful to you, Sir, for having organized a public meeting of the Security Council for non-member States on an issue of crucial importance for the codification and gradual development of international law. Indeed, this morning's debate — coming shortly before the celebration of the first anniversary of the entry into force of the Rome Statute on 1 July 2002 — has allowed the Council to hear welcome and useful comments from non-members, as well as their fertile thoughts on peace, international security and justice.

Because Cameroon is a peace-loving State of law that fervently supports the creation of human-centred international law, as well as a fierce partisan in the war against impunity, we participated wholeheartedly in the negotiations on and drafting of the Rome Statute. Moreover, we were among the first 11 countries in the world that signed the Statute on 6 July 1998. The process of ratification is now under way in my country.

For Cameroon, the International Criminal Court will undeniably strengthen the ability of existing structures in the maintenance of international peace and security, primarily those of the Security Council. That is why the relationship between those two bodies must be considered in the context of cooperation and complementarity. That is our ongoing conviction.

It will be recalled that last year, when we debated the renewal of the United Nations Mission in Bosnia and Herzegovina, the Security Council held lengthy and arduous discussions. There was a serious danger that the positive gains of United Nations peacekeeping operations might be wiped out. The Rome Statute offers the Security Council three legal options to overcome the deadlock: article 16; paragraph 2, of article 98, concerning bilateral agreements; and article 17, on the principle of complementarity. A consensual agreement with reference to article 16 was reached, which made it possible to respond to the legitimate concerns of a State Member of the Organization — whose important role in peacekeeping operations is clear — as well as to safeguard the continuation and effectiveness of its peacekeeping operations. On 12 July 2002, along with the 14 other members of the Council, Cameroon voted in favour of resolution 1422 (2002).

At a time when the Council is about to take a decision on renewing that resolution, Cameroon would like to reaffirm that those who act on behalf of the Council and who have been entrusted with the task of re-establishing peace have a crucial duty to humanize the task of peacekeeping. They must shoulder that responsibility while respecting both international law and life. Along with Secretary-General Kofi Annan, Cameroon also hopes that today's renewal exercise will not become a routine, given the consequences for international law and for the credibility of the International Criminal Court and the Security Council. We would like to make an urgent appeal for continued discussion and dialogue among the various parties in order to arrive at a lasting and pragmatic solution in accordance with international law.

Today's debate clearly demonstrates that it is not up to the Security Council to rewrite the Rome Statute. Wisdom and pragmatism must lead us to consider the concerns of all, to preserve the spirit and letter of the Rome Statute and to safeguard peacekeeping operations. In other words, it is our sacred duty to reconcile peace and justice.

In the light of the aforementioned, Cameroon has once again this year decided to vote in favour of the draft resolution introduced by the United States.

The President (*spoke in Russian*): I now put to the vote the draft resolution contained in document S/2003/630.

A vote was taken by show of hands.

In favour:

Angola, Bulgaria, Cameroon, Chile, China, Guinea, Mexico, Pakistan, Russian Federation, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America

Abstaining:

France, Germany, Syrian Arab Republic

The President (*spoke in Russian*): The result of the voting is as follows: 12 votes in favour, none against and 3 abstentions. The draft resolution has been adopted as resolution 1487 (2003).

I shall now give the floor to those members of the Council who wish to make statements following the voting.

Sir Jeremy Greenstock (United Kingdom): The United Kingdom associates itself fully with the declaration made earlier on behalf of the European Union by the Greek presidency.

My delegation has listened carefully to the views expressed in the course of this open debate, not least the views of the Secretary-General.

The United Kingdom has long been, and remains, a strong supporter of the International Criminal Court (ICC). We note with satisfaction that the number of States Parties continues to grow, and we encourage others to ratify, or accede to, the Statute.

While we understand United States concerns about the International Criminal Court, we do not share

them. But those concerns, articulated forcefully in 2002, are still firmly held, and the implications for Security Council-mandated and -authorized operations remain the same as they were last year.

We regard Security Council resolution 1422 (2002) as an exceptional measure. It is not permanent; nor is it automatically renewable. It is subject to scrutiny in the Council, at least annually. We look forward to the day when it or its successor will no longer be required. But resolution 1422 (2002), and now resolution 1487 (2003), are, in our view, consistent with article 16 of the ICC Statute. The Security Council accepted that unanimously on 12 July 2002. It does not undermine the Court; nor does it infringe upon the integrity of the Rome Statute.

The same is true of the resolution we have just voted on. The rollover it envisages will sustain the ability of the United States to contribute to international peacekeeping and other missions. The provisions of the resolution remain deliberately narrow, and there is no blanket immunity. Under the circumstances, we regard the adoption of this resolution as an acceptable outcome in what is for the Council a difficult situation.

Mr. Cunningham (United States of America): We welcome the Security Council's renewal for another year of the compromise on the International Criminal Court (ICC) so painstakingly put together in resolution 1422 (2002). Like any compromise, the resolution does not address all of our concerns about the Court. It balances divergent positions and helps to ensure against undermining of United Nations peace operations.

Like resolution 1422 (2002), resolution 1487 (2003) exempts States that are not parties to the Rome Statute but that participate in United Nations operations from the ICC's jurisdiction in a manner consistent with the Charter of the United Nations and with the 1998 Rome Statute. The resolution is consistent with a fundamental principle of international law: the need for a State to consent if it is to be bound. That principle is respected by exempting from ICC jurisdiction personnel and forces of States that are not parties to the Rome Statute. It is worth noting that the resolution does not in any way affect parties to the Court, or the Rome Statute itself. Nor does it, as some today have suggested, elevate an entire category of people above the law. The ICC is not the law.

The provisions of this resolution are as relevant and necessary today as resolution 1422 (2002) was a year ago. We all know that United Nations operations are important if the Council is to discharge its primary responsibility for maintaining or restoring international peace and security. We also all know that it is not always easy to recruit contributors, and that it often takes courage on the part of political leaders to join military operations established or authorized by the Council. It is important that Member States not add concern about ICC jurisdiction to the difficulty of participating.

We have heard the argument that this resolution is not necessary, and we do not agree. I would suggest that even one instance of the ICC attempting to exercise jurisdiction over those involved in a United Nations operation would have a seriously damaging impact upon future United Nations operations. We are disappointed, of course, that not every Council member shares our view, but we are not at all persuaded that our concerns are overstated or that they lack validity.

The United States yields to no country in its historical leadership in the struggle for international justice and accountability for war crimes. After all, the United States was the first country to codify the laws of war and international humanitarian law. It was also an original participant in the creation of every successful international effort to date to adjudicate allegations of war crimes and crimes against humanity. It has been, and will continue to be, a strong supporter of the tribunals established under the aegis of the Council. But, unlike the ICC, those tribunals are accountable to the Security Council.

The ICC is not a United Nations institution. Some would even say that it challenges and weakens the United Nations Charter system and the Council's place in it. The ICC is vulnerable at every stage of any proceeding to politicization. The Rome Statute provides no adequate check. Having every confidence in the ICC's correct behaviour, however that is defined, is not in our view a safeguard. We have already seen in other forums the potential for politically motivated criminal charges against national leaders and military officers, including over the recent Iraq hostilities. Our primary concern, of course, is for American personnel that may find themselves subject to ICC jurisdiction, even though the United States is not a party to the Rome Statute.

As Ambassador Negroponte explained last year, the power to deprive a citizen of his or her freedom is an awesome thing, which the American people have entrusted to their Government under the rules of our democracy. The International Criminal Court does not operate in the same democratic and constitutional context and therefore does not have the right to deprive Americans of their freedom.

The United States therefore has a fundamental objection to the International Criminal Court. In our view, it is a fatally flawed institution. Many others, including some of our closest friends, do not share that view. We are thoroughly familiar with our respective positions and understand that those positions are not going to change in the foreseeable future. We all need to acknowledge that fact and its implications.

This resolution represents a compromise that respects the strongly held views of those who support the ICC and the equally strongly held views of those who do not. Such respect is important to maintain. This compromise, therefore, is important to maintain.

Mr. Duclos (France) (*spoke in French*): My delegation fully associates itself with the statement made this morning by the Greek presidency of the European Union. We also wish, in our national capacity, briefly to explain the reasons why France decided to abstain on the draft resolution submitted by the United States, to renew for one year, beginning on 1 July 2003, the provisions of Security Council resolution 1422 (2002), which the Council adopted on 12 July 2002.

Paragraph 2 of resolution 1422 (2002) did not contain a commitment to automatic renewal. That paragraph, of course, expresses the intention of the Council regarding renewal of the resolution, but it stipulated that such renewal would be "for as long as may be necessary". That wording clearly implies an obligation to judge the appropriateness of renewing the resolution according to the circumstances.

Last year, after long and sometimes difficult negotiations, France, like the other States members of the Council, supported the one-year exemption provided for under resolution 1422 (2002). We did so, in particular, to take into account two very important circumstances: the risk existing at the time of the non-renewal of the mandate of certain United Nations forces or missions, and the concern, at the request of those missions, to provide the United States with more time to find a lasting solution to their concerns with respect to the Statute of the International Criminal Court. Those two elements belong to a context that now lies in the past.

Since then, other developments have occurred that we think can respond to the concerns that the United States has expressed. The past year has demonstrated that it is highly unlikely that a case could arise triggering the application of resolution 1422 (2002). That was pointed out by Secretary-General Kofi Annan in his statement this morning. This is especially true since the International Criminal Court, which now has 90 States Parties, has become a reality, given the election this year of its 18 judges and its Prosecutor and the forthcoming appointment of its Registrar. The Court's professionalism will be judged on the facts. The recognized quality and competence the Court's members ensures without doubt the credibility of that international body. That credibility provides the best safeguard against any possible suspicion of a politically motivated Court.

Finally, at the very moment that the International Criminal Court is being established, we did not think it was appropriate to renew for one year the exemption given to certain personnel of non-States parties to the Rome Statute that are participating in forces or missions under the aegis of the United Nations. Such a renewal risks lending credence to the perception that such exemptions are permanent. That appearance of permanency can only weaken the Court and harm its authority.

The Council has just adopted resolution 1487 (2003). A new one-year extension has been created. My delegation expresses its wish that this time period will allow the States that still have a bias against the International Criminal Court to overcome that bias. That bias does not seem to us to be well founded.

Mr. Pleuger (Germany): Germany supports the position of the European Union as expressed in the statement made by the Greek presidency earlier this morning. We agree, in particular, with the remarks pertaining to article 16 of the Rome Statute. We also share the views of the Secretary-General and the concerns expressed by all the delegations in the open debate. We therefore could not vote in favour of the draft resolution.

Germany was and remains a major driving force in the creation of the International Criminal Court

(ICC). As a State party, Germany is deeply committed to the mission of the ICC: to fight impunity by prosecuting those responsible for the most serious crimes that are of concern to the international community in situations where national jurisdictions do not prosecute those crimes. The International Criminal Court project has been consistently and actively supported by the present and earlier Governments of the Federal Republic of Germany. The German Parliament has repeatedly expressed its support for the ICC across party lines.

We feel that a treaty already ratified by 90 States and signed or ratified by 12 of the 15 Security Council members should not be amended by a Security Council resolution.

Justice is, and must remain, indivisible. At the beginning of the new millennium, the International Criminal Court will serve as an efficient and indispensable instrument to further international security, peace and justice.

We do not share the view that the ICC is an impediment to peacekeeping. On the contrary, the ICC is a safeguard. As an institution designed to prevent impunity, the ICC can play an important role in protecting peacekeepers in the execution of their missions.

Meanwhile, the Judges and the Prosecutor of the ICC have been elected. Germany is confident that experience will show that the Court is going to work impartially, justly and without politically motivated misuse.

Mr. Arias (Spain) (*spoke in Russian*): I wish to congratulate you, Sir, on your national holiday.

(*spoke in Spanish*)

First of all, I would like to say that Spain, as a member State of the European Union, supports the statement made by the Permanent Representative of Greece.

Spain has unreservedly supported the International Criminal Court. In the matter under discussion, we consider that article 16 of the Rome Statute is mentioned in the resolution adopted today in accordance with the Statute. As a result, we understand that the renewal of the provision in paragraph 1 of resolution 1422 (2002) does not affect the integrity of the Statute.

Lastly, I would like to add that from our point of view, it should not be taken for granted that invoking article 16 will become a regular practice. It is clear that in every case the Council will have to study the circumstances that prevail at the time, which could vary in the future. For this reason, Spain considers that the Council is still the master when considering whether to renew or not, as necessary, without renewals being automatic, in accordance with the resolution.

The President (*spoke in Russian*): I thank the representative of Spain for congratulating us on our national holiday in the Russian Federation.

Mr. Wehbe (Syrian Arab Republic) (*spoke in Arabic*): My delegation abstained in the vote on the draft resolution for the following reasons.

The Syrian Arab Republic does not see any necessary justification for renewing resolution 1422 (2002) this year. Last year we voted for the resolution, and the Council adopted it unanimously. Our vote this year is based on the conviction that articles 16 and 17 of the Rome Statute respond to the preoccupations and problems involved in the renewal of resolution 1422 (2002). The Secretary-General referred to this matter in his statement this morning.

Eleven months have passed since the adoption of resolution 1422 (2002), without any need arising that requires the reaffirmation of the importance of continuing to give permanent immunity to peacekeeping forces of those States that are not parties to the International Criminal Court from coming before the Court and having its Statute implemented against them.

Secondly, we are fully confident that peacekeeping forces and those working in international forces established by the Security Council for the maintenance of international peace and security in many parts of the world are assumed to be above all form of suspicion vis-à-vis crimes that come under the jurisdiction of the ICC as war crimes or crimes against humanity or genocide. Peacekeeping forces are sent by the Security Council, whether or not they belong to States parties to the Court — it is the same — and they do not go to areas of conflict in order to commit war crimes and crimes against humanity and genocide. Their function is to bring peace to those areas and to maintain international peace and security to those

regions, in accordance with the jurisdiction authorized by the Council.

In the event that they perpetrate crimes breaching the Rome Statute, then they can be surrendered to their Governments, who will try them before their national courts in accordance with article 17 and with the principle of judicial complementarity, as mentioned in article 1 of part 1, on the establishment of the Court.

Thirdly, when resolution 1422 (2002) was adopted last year, the ICC was in its first days of establishment. Today, the Court has been in existence for 11 months. It has become a concrete reality, and Judges were elected from among qualified judicial persons. The Court has become almost universal, since the number of States ratificating the Rome Statute has reached 90 and there are 140 signatory States. Hence, we believe that the adoption of this resolution would result in gradual weakening of the Court's role in persecuting those who have perpetrated the most heinous crimes that come under its jurisdiction.

As my country supported the establishment of the Court and participated in drafting its Statute, it has signed the Statute and is about to take the legislative procedures necessary to ratify it.

Fourthly, we have full confidence in international criminal justice. We would like to affirm the importance of upholding the principles, objectives and purposes of the United Nations Charter and respecting international law and international humanitarian law, particularly the Geneva Conventions, which govern crimes perpetrated during wartime and armed conflict by all parties.

Mr. Raytchev (Bulgaria): We appreciate the holding of this open Security Council debate on an issue of particular importance for the entire international community.

We have listened carefully to the statements made before the Council. As a country associated with the European Union, Bulgaria endorses the statement earlier delivered by the representative of Greece on behalf of the Union.

On a number of occasions, Bulgaria has expressed its adherence to the efforts for strengthening international law. In that regard, I would like to point out that Bulgaria fully recognizes and adheres to its international obligations as a State party to the Rome Statute and supports the European Union position on the need to strengthen the regime established under the Rome Statute. In our consideration of this important matter, we are respecting both the International Criminal Court (ICC), which we view as the most ambitious achievement in current international law, to which we are strongly committed, and the Council, which is responsible for the maintenance of international peace and security.

While sensitive to the legitimate concerns of the various countries involved in peacekeeping operations, Bulgaria among them, we continue to support the effective functioning of the ICC as a court with universal jurisdiction to combat and prevent crimes against humanity, genocide and war crimes. We believe that support for resolution 1422 (2002) and for the resolution adopted today allows the Council to continue efforts to arrive at a solution that will not undermine the credibility of the ICC and will not affect in any way United Nations peacekeeping operations.

For Bulgaria, it was particularly important to reach consensus on this resolution. While we are convinced that the search for compromise should not be linked to the weakening of important international treaties such as the Rome Statute, we remain of the view that Council members must act in the spirit of compromise and understanding and actively work to find a solution that is acceptable to all.

Mr. Lucas (Angola): By adopting resolution 1422 (2002) the Security Council addressed a very relevant issue: the relationship between the International Criminal Court (ICC) and the effectiveness of United Nations operations for the maintenance and restoration of peace and security.

We praise the efforts and commitment of Member States that contribute personnel to these operations. We are concerned over the existence of different views within the international community regarding the Rome Statute and its consequences for United Nations peacekeeping operations.

We understand the apprehension expressed by many countries that resolution 1422 (2002) undermines the credibility of and weakens the International Criminal Court. In that regard, we are convinced that serious crimes that concern the international community should not be left unpunished and that effective prosecution of those crimes must be ensured by taking measures at the national level and by enhancing international cooperation when required.

The Angolan delegation maintains that in its scope resolution 1422 (2002) does not affect the present and future development of international criminal law or the ability of the United Nations to conduct operations to restore international peace and security. We believe that the resolution does not create a precedent for interference by the Security Council in the sovereign right and capacity of Member States to prosecute repugnant crimes against humanity that are referred to in the Rome Statute.

It is our view that the international community must ensure that the International Criminal Court is not undermined or weakened, that it fulfils the mandate for which it was established, that Member States keep their commitments to provide the needed personnel and support to peacekeeping operations established or authorized by the Security Council and that the review of the resolution that the Council adopted today does not lead to automaticity in its renewal.

By holding this open debate, the Security Council is promoting transparency in its proceedings and showing the importance of issues associated with international justice for the maintenance of international peace and security.

Mr. Traoré (Guinea) (*spoke in French*): On behalf of my delegation, Sir, I too would like to congratulate you on the national day of the Russian Federation.

A year has passed since the Council unanimously adopted resolution 1422 (2002) thanks to a compromise, which took into account the concerns expressed by some Member States on the one hand, and respect for the Statute of the International Criminal Court, on the other. My country, which is a signatory to the Rome Statute, reaffirms the principle of universality and the primacy of the Court, whose establishment will help us build a world based on the rule of law.

We must recognize that the Rome Statute offers safeguards that enable States to enjoy some exceptions if need be. In that regard, we do not see any basic or insurmountable contradiction at this time. Therefore, my delegation, which perfectly understands the concerns expressed by some, maintains the hope that in the near future the consensus for which everyone wishes will emerge after our consideration of the issue, not only for the implementation but also for the strengthening and greater effectiveness of peacekeeping operations. My country's support for renewing resolution 1422 (2002) is part of that view and should in no way be considered automatic renewal year after year.

Mr. Cheng Jingye (China) (*spoke in Chinese*): I too would like to congratulate you, Mr. President, on the occasion of your national day.

China supports the establishment of an independent, impartial, effective and universal International Criminal Court (ICC). The Chinese Government actively participated in the whole process leading to the establishment of the ICC. We will now follow closely its operations. We hope that the ICC, through its performance, will contribute to the universality of the Rome Statute.

My delegation views today's debate as very useful. We understand the concerns registered by many countries at today's meeting. We attach importance to the views expressed by the Secretary-General. We hope that in the year following the renewal of resolution 1422 (2002) the parties concerned will carefully study the relevant questions with a view to finding proper solutions.

The President (*spoke in Russian*): I shall now make a statement in my capacity as the representative of the Russian Federation.

We consider the item on the agenda of today's open meeting to be very complex and fundamentally important for the majority of Member States. We welcome the engaged and candid debate, during which it was important not only to state our positions once more but also to try through our common efforts to achieve the optimal and most balanced solution to the problem in this specific situation.

On the one hand, the concerns arising for some States parties to the Rome Statute are understandable. The authority of the Statute, as one of the cornerstones of international law documents, is continuing to grow, as witnessed by the ever-increasing number of States parties. We hope that the practical work of the Court, which has only just begun, will be successful, and will not only strengthen the positions of its unconditional supporters, but will help dispel the doubts that still exist in some countries as to its effectiveness and impartiality.

On the other hand, the International Criminal Court has not yet become a universal instrument.

Consequently, it is essential to bear in mind the legitimate interests of the States that are not yet States parties to the Rome Statute. We must also take into account the aspects of the issue under consideration today that have a direct bearing on the organization and conduct of peacekeeping operations. The Secretary-General today drew the Council's attention to that aspect.

This is not the first time that the Security Council has discussed this topic. Thus, in the resolution just adopted, resolution 1487 (2003), the Council has taken into account as much as possible its previous discussions and the compromise solutions achieved.

I now resume my functions as President of the Security Council.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda. The Council will remain seized of the matter.

The meeting rose at 1 p.m.